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Martha Minow

Abstract

First, this article explores the role of international criminal trials and truth commissions in resisting narratives of collective guilt and producing a different sort of collective memory, helping the society-and the watching world-not merely recall but also re-member, that is, to reconstitute a community of humanity against which there can be crimes (hence, “crimes against humanity”), and within which victims and survivors can be reclaimed as worthy members. Second, this article explores the role of nongovernmental organizations in building towards a politics of inclusion. Finally, this article explores the experience of survivors of mass atrocity reconciling memory with living.

THE WORK OF RE-MEMBERING: AFTER GENOCIDE AND MASS ATROCITY

*Martha Minow**

INTRODUCTION

After the Holocaust, many people around the world embraced the words, "Never again." Never again should the world watch as a nation runs amok and systematically destroys groups of its own and other nations' citizens. The expulsion of the ethnic Albanians from Kosovo and the murder of still an untold number would be shocking in their audacity and cruelty had we not so recently witnessed the mass murders in Rwanda and the ongoing conflict in Bosnia. But if we are not shocked, then we have forgotten to remember, "Never again."

Perhaps we have not yet learned how, really, to remember. Our capacity for repression is one of our species' great talents and great vulnerabilities. Capable as we are of self-consciousness, perhaps repression is our necessary escape valve, an "off" switch, a fancy filter, especially of use when awareness produces unbearable pain. Yet for survivors, repression of trauma can make going on with normal life impossible. Intermittent amnesia and sudden episodes of reliving the event as if it were still occurring interrupt the life of someone with repressed memories. Even observers of traumatic events can be plagued by similar experiences.

Remembering requires deliberate hard work to reconstruct and retell what happened, and to do so with full emotion. Therapists who work with trauma victims recount how initial tellings of what happened often seem emotionless, lacking any sense of the survivor's feelings. Recalling and re-experiencing the physical sensations, anxieties, and horror, according to experts, are central to a recovery that allows the individual to move what happened to the past rather than have it remain in the endless present.¹ Even most of us, who are remote observers of mass violence, risk pushing it aside without really looking at it. If we do

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1. See NEIL BELTON, *THE GOOD LISTENER: HELEN BAMBER, LIFE AGAINST CRUELTY* (1998); JUDITH LEWIS HERMAN, M.D., *TRAUMA AND RECOVERY* (1992).

really look at it, then we will never be able to put it fully behind us.

The question is whether we can learn to remember atrocities so that we resolve always to prevent them—while learning also to distinguish past and present sufficiently to refrain from revenge. For too many people in the former Yugoslavia, the endless present seems inextricable from a traumatized past. As Michael Ignatieff observed,

What seems apparent in the former Yugoslavia is that the past continues to torment because it is not the past. These places not living in a serial order of time but in a simultaneous one, in which the past and present are a continuous, agglutinated mass of fantasies, distortions, myths, and lies . . . [This] is the dreamtime of vengeance. Crimes can never safely be fixed in the historical past; they remain locked in the eternal present, crying out for vengeance.²

A related difficulty is that relatives, kinspeople, and finally people who simply share an ethnic past, are blamed for horrors committed last year, or centuries ago. How we remember must not mistakenly produce narratives of collective guilt lying ready to be ignited by manipulative demagogues.

I. INSTITUTIONS AND STORIES

It is here—in resisting narratives of collective guilt and producing a different sort of collective memory—that international criminal trials and truth commissions can be of value. The task is to help the society—and the watching world—not merely recall but also re-member, that is, to reconstitute a community of humanity against which there can be crimes (hence, “crimes against humanity”), and within which victims and survivors can be reclaimed as worthy members.³ Indeed, the task is to help avoid the castigation and exclusion of whole groups of people—labeled as co-nationalists or otherwise associated with perpetrators—from the sphere of common concern. As accentuated by the commitment to the rule of law, the tribunal and prosecutorial structure also affirm the fundamental humanity of those charged and eventually convicted of war crimes and crimes

2. Michael Ignatieff, *Articles of Faith*, INDEX ON CENSORSHIP, Sept./Oct. 1996, reprinted in *The Elusive Goal of War Trials*, HARPER'S, Mar. 1997, at 15, 16-17.

3. I thank Rabbi Arnold Resnicoff for this notion.

against humanity. For it is that fundamental humanity that entitles them to both procedural rights and to inclusion within the legally-framed sphere of human responsibility. Otherwise, they could simply be targets for retaliation and revenge. To remember, thus, is to reaffirm the central insight of human rights: that all people share sufficient fundamental worth to be guaranteed membership within the group called humanity.

I am skeptical of ambitious claims that international criminal prosecutions deter the masterminds of genocide.⁴ But these and other procedures emphasize the particularities of what happened. Both the public experience of witnessing the trials, or reports about them, and the products of such trials, may alter the way people remember and thus the way they deal with the tormenting past.

International criminal prosecutions of the sort initiated by the Nuremberg Tribunal⁵ and continued now with the International Criminal Tribunals for the Former Yugoslavia⁶ and Rwanda⁷ focus on specific individuals, charged with specific offenses. The criminal adjudications' premise of individual responsibility emphasizes, as it should, that the person who incites genocide, the person who orders mass killings, and the person who rapes, tortures, and kills each has some capacity for free choice and could have acted otherwise. Yet the individual focus of adjudication cannot capture the complex connections among people that make massacres and genocide possible. Instead, the trial forces those individuals selected for prosecution to serve as central, larger-than-life characters, who stand in for all the numerous others who could not be found, or who could not feasibly be tried if the nation is to go on to any future.⁸

4. I elaborate my view in MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* 145-46 (1998). For a different view, see THEODORE MERON, *WAR CRIMES LAW COMES OF AGE: ESSAYS* 201-03 (1998).

5. See Agreement by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 82 U.N.T.S. 279.

6. See S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993) (establishing international tribunal for human rights violations in former Yugoslavia).

7. See S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994) (establishing international tribunal for human rights violations in Rwanda).

8. See MARK OSIEL, *MASS ATROCITY, COLLECTIVE MEMORY AND THE LAW* 72-73

Recent trials for genocide and crimes against humanity provide evidence to challenge the skeptics. Internal investigations and prosecutions of persons responsible for serious violations of international humanitarian law are "possible and credible."⁹ Clarifying that crimes against humanity include systematic attacks against a civilian population, which can be charged not only against states but also against terrorist groups, the recent conduct of the *ad hoc* tribunals also advances the scope and detail of norms.¹⁰

Trials for genocide and crimes against humanity do not, however, usually focus on the specific individuals who were tortured and killed. Estimates of the number of those destroyed inevitably stand in for each mother, friend, and brother destroyed. Yet, as Judith Miller writes, "Abstraction is memory's most ardent enemy."¹¹ It encourages distance and often, indifference. Etty Hillesum, who died in Auschwitz, wrote in her diary: "[t]he outside world probably thinks of us as a grey, uniform, suffering mass of Jews, and knows nothing of the gulfs and abysses and subtle differences that exist between us."¹² She anticipated our problem even to this day: how to remember her and all the others as distinctive individuals.

Etty herself refused to go into hiding or to escape and instead stayed to help others in a Dutch transit camp before being deported herself. She wrote in her diary, "[w]hatever I may have to give to others, I can give no matter where I am, here in the circle of my friends or over there, in a concentration camp."¹³ In retrospect, does she seem naive, and oddly intrigued by the idea of martyrdom? Yet she wanted to live. Funny, passionate, poetic, and vibrant, she wanted to be a chronicler of her terrible age. She wrote: "I shall wield this slender fountain pen as if it were a hammer and my words will have to be so many hammer-strokes."¹⁴ Can we remember Etty, and as many as possible of the others who perished in grotesque mass slaughter, by name

(1997); HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 8 (1977).

9. MERON, *supra* note 4, at 297.

10. *See id.* at 298-99.

11. JUDITH MILLER, *ONE, BY ONE, BY ONE: FACING THE HOLOCAUST* 287 (1991).

12. ETTY HILLESUM, *AN INTERRUPTED LIFE: THE DIARIES OF ETTY HILLESUM, 1941-1943* 218 (Arno Pomerans trans., Pantheon Books 1983).

13. *Id.* at 150.

14. *Id.* at 181.

and unique spirit? What individual spirits and hopes have left behind only bodies now exhumed in Kosovo, and the Sudan, and East Timor?

We will never know all that have been lost. But to honor them, the memories we gather must be particular. Here, the South African Truth and Reconciliation Commission¹⁵ ("TRC") offers some constructive lessons. Its public hearings and gathering of statements from over 20,000 survivors of gross human rights violations made it possible for at least some specific people to be remembered—and for survivors to speak of what happened, and to ask for answers to the excruciating questions, such as, where is my son's body, who shot him, and can I have his bones. The TRC's investigations, and the information obtained from petitions by individuals seeking amnesty, answered some of these questions. Even with its extraordinary attention to survivors, though, the TRC had to set limits. Only a small fraction of those giving statements also gave public oral testimony. When it came time to produce the TRC's report, there was insufficient space to record even a short sentence from each of the 20,000 survivors who testified. As it is, the TRC's report fills five volumes.

The stories must be gathered and told, preserved, and reheard. Journalist Philip Gourevitch notes in his searing portrait of Rwanda after genocide:

On any given day in postgenocide Rwanda, you could collect stories of fresh ugliness, and you could also collect stories of remarkable social and political improvement. The more stories I collected, the more I began to realize that life during genocide, by virtue of its absoluteness, had evoked a simpler range of responses than the challenge of living with its memory. For those who had endured, stories and questions tended to operate in a kind of call-and-response fashion—stories calling up questions, calling up more stories, calling up more questions—and nobody of any depth seemed to expect precise answers Quite often, I felt that these stories were offered to me the way that shipwrecked people, neither drowned nor saved, send messages in bottles: in the hope that, even if the legends they carry can do the teller no good, they may at some other time be of use to somebody, some-

15. See Promotion of National Unity and Reconciliation Act (1995) (S. Afr.) (establishing South African Truth and Reconciliation Commission).

where else.¹⁶

The formal and informal gathering of stories following genocide and mass violence may do some good for those who try to speak about the unspeakable and for those who may someday try to learn the lesson that there are no lessons from these events but the one of trying to make "Never again" more than a chanted phrase.

II. *TERROR AND LABELS*

The questions and stories of ordinary people—some heard and some never known—are what war is now. At the start of the twentieth century, military personnel made up eighty-five to ninety percent of wartime casualties; by the 1990s, ninety percent of the casualties were civilians—and disproportionately, women and children.¹⁷ Mary Kaldor explains that this shift reflects the broader development of a new kind of war, which concerns identity politics rather than ideologies, which use techniques of terror and destabilization to sow fear and hatred, and which produces decentralized economics with high unemployment and greater susceptibility to mobilization for further violence.¹⁸ Nation states seem to have less and less capacity to control violence, and instead long-term, low-level, informal violence spreads.¹⁹

Although wars have long seemed to pit people against one another in terms that can be defined by ethnic, religious, or national identities, the very aim of new armed conflicts is to mobilize people along lines of group affiliation without a link to a particular forward-looking project for a territory or region. They claim a past or nostalgic affiliation rather than an emancipatory or group-interest nation-building project.²⁰ Kaldor points to the recent struggles in Bosnia-Herzegovina as a prime example.²¹ The analysis implies, chillingly, that the new wars undermine humanity not only in the torture, forced expulsions, and killings

16. PHILLIP GOUREVITCH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA* 183 (1998).

17. MARY KALDOR, *NEW AND OLD WARS: ORGANIZED VIOLENCE IN THE GLOBAL ERA* 56 (1999).

18. *Id.* at 4-12.

19. *Id.* at 152.

20. *Id.* at 6-7, 110.

21. *Id.* at 31-68.

they produce, but also in the dehumanization of those who survive. For the terrorized, the sorting, and the reduction of people by label, produces no aspirations or hopes, only the grounds for the next destabilizing insurrections of revenge.

Kaldor argues—and I agree—that the response to these wars must be a politics of inclusion, which employs as aggressive a method of political mobilization as the politics of fear and hatred.²² Here, I suggest that nongovernmental organizations are the most likely candidates to accomplish this, and even they must think of their roles more expansively and politically to prevent the further dismemberment of human communities.

Some nongovernmental organizations undertake functions, such as humanitarian and development aid, once fulfilled by governments. Others advocate change chiefly by serving as independent factfinders, able to mobilize a transnational constituency to pressure national governments to redress documented crimes. Still others perform more explicit roles of political engagement. Each of these modes emerged in harmony with the ideas of human dignity advanced by the Universal Declaration of Human Rights of 1948.²³ Each of these modes also emerged with the theoretical insight and the practical knowledge that neither the nation states alone, nor the incipient international institutions, could do the work of implementing universal human rights as the Cold War developed.²⁴

Perhaps, ironically, the United Nation's very impotence left room for other actors to help advance the vision of universal human dignity. Nongovernmental organizations cultivated consciousness about human rights during the 1960s and 1970s through grassroots organizing, muckraking reportage, and shaming techniques previously associated more with small towns than global politics.²⁵ In a way revealing the "power of the weak," nongovernmental organizations also contributed to the view of human rights as a challenge to sovereignty and other

22. *Id.* at 114.

23. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., at 135, U.N. Doc. A/810 (1948).

24. See Mary Ann Glendon, *Knowing the Universal Declaration of Human Rights*, 73 NOTRE DAME L. REV. 1152, 1160, 1168-70 (1998).

25. See Martha Minow, *Instituting Universal Human Rights Law: The Invention of Tradition in the Twentieth Century*, Presented at Law2000, Amherst College, Amherst, Mass. (Oct. 2, 1999).

conventional concentrations of power.²⁶

The growth and successes of nongovernmental organizations can be illustrated by one of the first modern ones. British lawyer Peter Benenson launched Amnesty International in 1961 with a newspaper appeal about forgotten prisoners.²⁷ Within a year, it had chapters in seven countries and sent delegations to four nations to advocate for over 200 prisoners.²⁸ By 1999, it had sections in fifty-six countries and over one million members.²⁹ Issuing reports about the conditions and treatment of prisoners of conscience, about extrajudicial execution, and about the "disappearance" of individuals due to suspected human rights violations, Amnesty International moved its supporters to use increasingly sophisticated communications technologies such as electronic mail and fax, as well as traditional mail and vigils, to bring visibility to problems and to press government officials to end transgressions.³⁰ Its budget grew from approximately US\$20,000 in the 1960s to more than a thousand times that size in 1998.³¹

The 1999 Nobel Prize for Peace awarded to Médecins Sans Frontières,³² or "Doctors Without Borders," recognized the courageous role played by this nongovernmental organization, which not only provides immediate medical and humanitarian aid, but also speaks out against the forces endangering those it seeks to help.³³ To do the work of mobilizing people against

26. Cf. ELIZABETH JANEWAY, *POWERS OF THE WEAK* (1980).

27. See *Facts and Figures About Amnesty International*, (visited Aug. 23, 1999) <<http://www.web.amnesty.org/web/aboutai.nsf>> (on file with the *Fordham International Law Journal*).

28. *Id.*

29. *Id.*

30. *Id.*

31. Compare *id.* with David Rieff, *The Precarious Triumph of Human Rights*, N.Y. TIMES MAGAZINE, Aug. 8, 1999, at 36, 37.

32. See *Médecins Sans Frontières (Doctors Without Borders)*, (visited Nov. 15, 1999) <<http://www.msf.ca/english/work.html>> (on file with the *Fordham International Law Journal*) (describing organization as "the world's largest independent, international medical relief organization" which will mount operation "[w]here there is no medical infrastructure or one that cannot withstand the pressure it is subjected to.") They also declare that:

[i]n carrying out humanitarian assistance, we act as a witness and will speak out, either in private or in public, about the plights of populations in danger for whom we work. In doing so, Médecins Sans Frontières seeks to alleviate human suffering, to protect life and health and to restore and insure respect for the human beings and their fundamental rights.

Id.

33. *Id.*

hatred, group labeling, and fear, however, will require even more extensive efforts than any nongovernmental organizations have undertaken so far. After critical periods of violence, nongovernmental groups should muster not only humanitarian and peacekeeping aid, but also resources for media uncontrolled by factional forces. Attention to adolescents—after crisis periods but also before them—is especially crucial because they are likely targets of the hate-mobilizing efforts, and because the memories they develop as teens will most likely be the ones that endure throughout their lives.

These and other efforts by nongovernmental actors cannot work, however, without basic law and order. In many places, therefore, nongovernmental and transgovernmental efforts will also be needed to strengthen basic peace-keeping, law enforcement, judicial institutions, and infrastructure services.³⁴ Building local capacity so that what outsiders support will work and endure for those who are the ostensible recipients of humanitarian aid must be the guideposts for such efforts.³⁵ Although it may sound obvious, it turns out to be unusual for humanitarian programs to take the cultural mores and social needs of local people into account. For example, for fifty years, humanitarian planners built refugee camps around the world in a square grid pattern, with rows of large, high-occupancy buildings laid out like military barracks with constantly enlarging flows of residents straining the camps' infrastructure.³⁶ A man named Fred Cuny startled the nongovernmental aid community by introducing single-family tents.³⁷ These tents were arranged in clusters of communal units, each with its own latrines and bathing and cooking areas, with open space separating intensive services such as medical areas.³⁸ The result was a quickly stabilized population and communal group with no outbreak of infectious disease and an upsurge of cottage industries and self-help organizations—unlike the conventionally-styled camps where overcrowding, dis-

34. KALDOR, *supra* note 17, at 122-31.

35. See SCOTT ANDERSON, THE MAN WHO TRIED TO SAVE THE WORLD: THE DANGEROUS LIFE AND MYSTERIOUS DISAPPEARANCE OF FRED CUNY 65-66, 72-73, 78-79, 88-89, 135-39, 143-44 (1999).

36. *Id.* at 78-79.

37. *Id.* at 79.

38. *Id.*

trust, and disease reigned.³⁹

Nongovernmental organizations must not shrink from such challenging tasks as peace-keeping, law enforcement, building lasting infrastructures, and nurturing communities. In a world in which aggression can take the form of humanly-made famines, generated more by corruption and cruelty than by poverty or natural disasters, the humanitarian intervenors must not be dupes. They, instead, must be counter-mobilizers to the aggressors. If this means altering the very idea of who is a player—a member—on the world stage so that nongovernmental actors as well as states have a voice, influence, and legitimacy, then yet another form of re-membling must be undertaken.

III. *RETURNING FROM A WORLD BEYOND KNOWLEDGE*

Too little resistance to hatred on the ground-level—where fears and aggression are stoked; too much do-gooding by people who fear engaging in political struggle—or naming and taking sides against those who oppress—will not help the task of remembering, as developed here. That challenge involves the most minute and heroic efforts to make an inclusive and universal vision real in the lives of those most in jeopardy from manipulated intergroup hatreds. And it involves the grubbiest work of building water lines tied to the subtlest understandings of local cultural practices and geopolitics.

For those who survive mass atrocity, the more profound problem of reconciling memory with living persists. Too little and too much memory; too many gone and too many shattered. These are the legacies of genocide and mass violence, and these are both moral and psychological disasters. Auschwitz survivor Charlotte Delbo has explained that she has two kinds of memory after her time in the concentration camp. Common memory pushes the events into the past and even makes the self she was there seem alien and distant. In common memory, surviving is a kind of redemption; there can be heroes and the gift of a new future. Deep memory, in contrast, reminds her that Auschwitz is not really the past and never will be. Delbo wrote in a poem:

39. *Id.*

As far as I'm concerned
I'm still there
dying there
a little more each day
dying over again
the death of those who died.⁴⁰

And later:

I have returned
from a world beyond knowledge
and now must unlearn
for otherwise I clearly see
I can no longer live.⁴¹

Can we make it possible so people never again need to unlearn a world beyond knowledge, memory, and meaning, a world outside of membership and hope?

40. CHARLOTTE DELBO, *AUSCHWITZ AND AFTER* 224 (Rosette C. Lamont trans., 1995).

41. *Id.* at 230.